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8 Attorneys for Defendant  
9 POSTMASTER GENERAL

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 MAY THIN ZAR and PHYU CASTILLO,

14 Plaintiffs,

15 v.

16 MEGAN J. BRENNAN, POSTMASTER  
17 GENERAL OF THE UNITED STATES  
POSTAL SERVICE,

18 Defendant.

Case No. 19-250-MMC

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT AND  
[PROPOSED] ORDER**

20 IT IS HEREBY STIPULATED by and between the parties, by and through their respective  
21 attorneys, as follows:

22 WHEREAS, Plaintiffs filed the above-captioned action on January 14, 2019;

23 WHEREAS, Plaintiff Thin Zar has filed the following administrative EEO complaint with Postal  
24 Service: *May Thin Zar v. Megan J. Brennan*, Agency Case No. 4F-940-0014-18.

25 WHEREAS, Plaintiff Castillo has filed the following administrative EEO complaint with Postal  
26 Service: *Phyu Castillo v. Megan J. Brennan*, Agency Case No. 4F-940-0028-18.

1           WHEREAS, through the above-captioned action, Plaintiffs allege that they were sexually  
2 harassed by their 204b supervisor Ronaldo Caluag, and that said harassment included physical assaults  
3 that led to emotional distress;

4           WHEREAS, Plaintiffs and Defendant wish to avoid any further litigation and controversy and to  
5 settle and compromise fully any and all claims and issues that have been raised, or could have been  
6 raised, in this action arising out of Plaintiffs' employment with Defendant, which have transpired prior  
7 to the execution of this Settlement Agreement ("Agreement");

8           NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and  
9 other good and valuable consideration, the Parties agree as follows:

10          1. **Settlement Consideration.** In full and final settlement of all claims in connection with the  
11 above-captioned action, Defendant agrees that:

12          (a) **Monetary Consideration:** Defendant shall pay Plaintiffs three hundred eight five thousand  
13 dollars (\$385,000.00) dollars ("Settlement Amount"), as a lump-sum payment to represent non-wage  
14 compensatory damages. The Settlement Amount shall be divided between Plaintiffs evenly. One check  
15 in the amount of one hundred ninety two thousand and five hundred dollars (\$192,500) will be made  
16 payable to May Thin Zar. One check in the amount of one hundred ninety two thousand and five  
17 hundred dollars (\$192,500) shall be made payable to Phyu Castillo. The checks will be mailed to  
18 Plaintiffs in care of their counsel at the following address: Julia Parish and Katherine Wutchiett, Legal  
19 Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, CA 94104. Plaintiffs and their  
20 attorneys have been informed that payment of the Settlement Amount may take sixty (60) days or more  
21 to process from the date that the Court "so orders" this Agreement to process.

22          (b) **Non-Monetary Consideration:** Defendant agrees:

23           (1) To provide each Plaintiff with a letter, in the form of Exhibit A, stating that Ronaldo  
24 Caluag may never supervise either Plaintiff.

25           (2) To inform Plaintiffs, in response to their inquiry, at which Postal Service location, if  
26 any, Ronaldo Caluag is working. Plaintiffs must make said inquiry by calling the USPS Pacific  
27 Area Law Office at (415) 550-5300.

28           (3) That the Postal Service will issue to Ronaldo Caluag the attached Exhibit B, along

1 with the attachments included therewith, and distribute the said Exhibit to the distributees  
2 indicated thereon. Additionally, should Plaintiffs learn that Ronaldo Caluag has been transferred  
3 to another Postal Service location, they may request, through the USPS Pacific Area Law Office  
4 at (415) 550-5300, that Exhibit B be distributed to the installation head and each managerial  
5 employee with authority over Mr. Caluag at that new location. The Postal Service will so  
6 forward Exhibit B.

7 (4) That, within the next three months, the Postal Service will provide Ronaldo Caluag  
8 with four (4) hours of in-person, individualized sexual harassment training, which includes  
9 disabusing Mr. Caluag of his unfounded belief that the Postal Service “exonerated” him with  
10 respect to Plaintiffs’ allegations of sexual harassment.

11 (5) That the Postal Service will, for the next four years, provide 30 minutes of semi-  
12 annual sexual harassment training to the bargaining-unit employees stationed at the Daly City  
13 Post Office at 1100 Sullivan Avenue in Daly City, CA, and Townsend Carrier Annex of the San  
14 Francisco Post Office at 550 Townsend Street in San Francisco, CA (“the Locations”). At that  
15 training, the Postal Service will hand out a one-page information sheet regarding discrimination,  
16 retaliation, and harassment and reporting the same, in the form attached hereto as Exhibit C.  
17 Additionally, in connection with each training, the Postal Service will conduct an informal  
18 “climate survey” check-in, through which an appropriate Postal Service representative will  
19 inquire whether any attendee has experienced sexual harassment and let the attendees know that  
20 the representative is available to discuss any such concerns.

21 (6) That, within the next year, the Postal Service will provide each Executive and  
22 Administrative Staff (“EAS”) and any bargaining-unit employee(s) then currently serving as  
23 acting supervisors (“204b supervisors”) stationed at the Locations with four (4) hours of in-  
24 person sexual harassment training. For the following three years thereafter, the Postal Service  
25 will provide EAS and 204b supervisors stationed at the Locations with two (2) hours of in-  
26 person sexual harassment training annually.

27 (7) That the Postal Service will provide Plaintiffs’ counsel semi-annual updates,  
28 beginning six months after the execution of the Settlement Agreement and continuing every six

1 months for a period of four years, regarding its implementation of the foregoing non-monetary  
2 terms.

3       2. **Release**. In consideration of the payment of the Settlement Amount and the other terms set  
4 forth in this Stipulation and Agreement, Plaintiffs hereby release and forever discharge Defendant, the  
5 United States Postal Service, and any and all of their past and present officials, agents, employees,  
6 attorneys, insurers, their successors and assigns, from any and all obligations, damages, liabilities,  
7 actions, causes of action, claims and demands of any kind and nature whatsoever, including claims  
8 arising under the Age Discrimination in Employment Act, 29 U.S.C. § 633a, whether suspected or  
9 unsuspected, at law or in equity, known or unknown, or omitted prior to the date they execute this  
10 Agreement, which arise from or relate to Plaintiffs' employment with Defendant, except as stated in  
11 Section 6, below.

12       3. **Attorneys' Fees**. Defendant will make a payment to Plaintiffs' counsel of two hundred  
13 fifteen thousand dollars (\$215,000.00) in full satisfaction of all claims for attorneys' fees and costs  
14 arising from work performed by Plaintiffs' counsel at all stages of litigation, including, but not limited  
15 to, the pre-processing and processing of Plaintiffs' administrative and district court complaints in  
16 connection with the above-captioned action, and any other EEO administrative proceedings which may  
17 be currently pending. The \$215,000.00 payment will be made by check payable to Legal Aid at Work,  
18 and mailed to Julia Parish and Katherine Wutchiett, Legal Aid at Work, 180 Montgomery Street, Suite  
19 600, San Francisco, CA 94104.

20       4. **Continuing Jurisdiction**. The Court will have continuing jurisdiction for a period of four  
21 years from the Effective Dates of this Agreement to enforce its terms.

22       5. **Dismissal**. In consideration of the payment of the Settlement Amount and the other terms of  
23 this Agreement, Plaintiff agrees to execute a Stipulation of Dismissal within seven days of this  
24 agreement, a copy of which is attached hereto as Exhibit D. The Stipulation of Dismissal shall dismiss,  
25 with prejudice, all claims asserted in this action, or that could have been asserted in this action. The  
26 fully executed Stipulation of Dismissal will be held by Defendant's attorney and will be filed with the  
27 Court at the expiration of the period of the Court's retained jurisdiction, as discussed in paragraph 4,  
28 above.

1       6. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section  
2 1542 are set forth below:

3       “**A general release does not extend to claims that the creditor or releasing**  
4 **party does not know or suspect to exist in his or her favor at the time of**  
5 **executing the release and that, if known by him or her, would have**  
6 **materially affected his or her settlement with the debtor or released party.”**

7 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by Plaintiffs'  
8 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights  
9 Plaintiffs may have pursuant to the provision of that statute and any similar provision of federal law.  
10 Plaintiffs understand that, if the facts concerning Plaintiffs' claims and the liability of the government  
11 for damages pertaining thereto are found hereinafter to be other than or different from the facts now  
12 believed by them to be true, this Agreement shall be and remain effective notwithstanding such material  
13 difference. No provision of this Agreement shall serve to waive any right to or eligibility for any  
14 retirement benefit. Nothing in this Agreement waives any claims or rights that cannot be waived by law,  
15 including Plaintiffs' rights to: (a) file a charge with an administrative agency or participate in any  
16 agency investigation or proceeding when waiver of such right is not permitted; (b) file a claim for or  
17 seek workers' compensation benefits, and (c) sue to enforce this Stipulation and Agreement. Nothing in  
18 this Agreement is intended to affect or in any way limit Phyu Castillo's right to participate and/or  
19 cooperate in any investigation or proceeding arising from EEOC Case No. 520-2010-00280X, claim no.  
M-124466.

20       7. **No Admission of Liability.** This is a compromise settlement of a disputed claim and  
21 demand, which settlement does not constitute an admission of liability or fault on the part of the  
22 Defendant, the Postal Service, or any of their past and present officials, agents, employees, attorneys, or  
23 insurers on account of the events described in Plaintiffs' complaint in this action.

24       8. **Tax Liability.** There shall be no withholding from the Settlement Amount. Plaintiffs  
25 understand that this payment will be reported to the Internal Revenue Service, and that any questions as  
26 to the tax liability, if any, as a result of this payment is a matter solely between Plaintiffs and the  
27 relevant tax authorities. If any withholding or income tax liability is imposed upon Plaintiffs or  
28 Plaintiffs' counsel based on payment of the Settlement Amount, Plaintiffs or Plaintiffs' counsel shall be

1 solely responsible for paying any such determined liability from any government agency thereof.  
2 Nothing in this Agreement constitutes an agreement by the United States of America concerning the  
3 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the  
4 United States Code.

5       9. **Treasury Offset Program.** Nothing in this Agreement waives or modifies federal, state, or  
6 local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or the settlement  
7 proceeds, and Plaintiff is executing this Agreement without reliance on any representation by Defendant  
8 as to the application of any such law. Accordingly, the United States may offset against the Settlement  
9 Amount Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586  
10 (2010).

11       10. **Choice of Law and Venue.** This Agreement is governed by the laws of the United States.  
12 The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States  
13 District Court for the Northern District of California.

14       11. **Construction.** Each party hereby stipulates that she has been represented by and has relied  
15 upon independent counsel in the negotiations for the preparation of this Agreement, that she has had the  
16 contents of the Agreement fully explained to her by such counsel, and is fully aware of and understands  
17 all of the terms of the Agreement and the legal consequences thereof, and enters into this Agreement  
18 knowingly and voluntarily. For purposes of construction, this Agreement shall be deemed to have been  
19 drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that  
20 reason in any subsequent dispute.

21       12. **Severability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable,  
22 the validity, legality, and enforceability of the remaining provision shall not in any way be affected or  
23 impaired thereby.

24       13. **Integration.** This instrument shall constitute the entire Agreement between the parties, and  
25 it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by  
26 the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement.  
27 The parties further acknowledge that no warranties or representations have been made on any subject  
28 other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise

1 changed in any respect except by writing, duly executed by all of the parties or their authorized  
2 representatives.

3       14. **Authority**. The signatories to this Agreement warrant and represent that they possess full  
4 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

5       15. **Execution in Counterparts**. It is contemplated that this Agreement may be executed in  
6 several counterparts, with a separate signature page for each party. All such counterparts and signature  
7 pages, together, shall be deemed to be one document.

8       16. **Knowing and Voluntary Waiver of Remedies Under Age Discrimination in**  
9 **Employment Act**. Plaintiffs acknowledge that they have up to twenty-one (21) calendar days from the  
10 date they receive this Agreement to review and consider this Agreement, discuss it with an attorney of  
11 their choice, and decide to sign it or not sign it, although Plaintiffs may accept or return it to Defendant's  
12 counsel at any time within those twenty-one (21) days. Plaintiffs are advised to consult Plaintiff's  
13 attorney about the Agreement.

14       17. Once Plaintiffs signs and date this Agreement, Plaintiffs will have seven (7) days in which to  
15 revoke acceptance. To revoke, Plaintiffs must send a written statement of revocation, which should be  
16 mailed and faxed to: AUSA Wendy M. Garbers, United States Attorney's Office, 450 Golden Gate  
17 Ave., San Francisco, CA 94102. Plaintiffs understand that if Plaintiffs revoke, this Agreement shall  
18 have no effect. If Plaintiffs do not revoke, this Agreement will become effective on the eighth (8th) day  
19 ("the Effective Date") after the date Plaintiffs sign and date this Agreement.

20       18. **Outstanding Liens for Medical and/or Psychological Treatment**. Plaintiffs are solely  
21 responsible for satisfying any and all outstanding liens relating to Plaintiffs' medical treatment arising  
22 out of the subject matter of this action. Plaintiffs shall indemnify Defendant from any liability  
23 Defendant may incur from any lien claimant arising out of Plaintiffs' failure to satisfy outstanding  
24 lien(s).

25  
26 DATED: 10/30/2019

  
Plaintiff May Thin Zar

27  
28 DATED: 10/31/2019

  
Plaintiff Phyu Castillo

STIPULATION AND [PROPOSED] ORDER CONCERNING STAYING DISCOVERY  
No. 19-250-MMC

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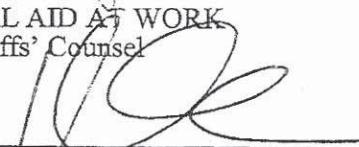
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DATED: 10/31/19

  
Julia Parish

LEGAL AID AT WORK  
Plaintiffs' Counsel

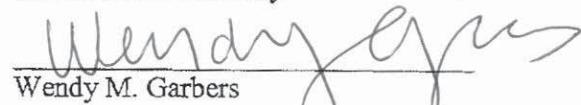
DATED: 6/31/19

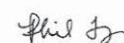
  
Wendy E. Musell  
STEWART & MUSELL, LLP  
Plaintiffs' Counsel

DATED: 11/4/19

DAVID L. ANDERSON  
United States Attorney

By:

  
Wendy M. Garbers  
Assistant United States Attorney  
Attorney for Defendant

  
Phil

  
Phil Ingram  
Agency Counsel  
USPS Pacific Area Law Office

DATED: 11/1/2019

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 8, 2019

  
HON. MAXINE M. CHESNEY  
United States District Judge

# **Exhibit A**



November 1, 2019

RE: Supervisory Structure for May Thin Zar

To Whom It Concerns:

Please be advised that, pursuant to the resolution of an action in federal court, the Postal Service may not assign Ronaldo Caluag to supervise the employment, conduct, or performance of May Thin Zar, no matter their respective positions.

Should you have any questions about this situation, please contact the Pacific Area Law Office at (415) 550-5300.

Thank you,

A handwritten signature in black ink that appears to read "David Morrison".

David Morrison  
Manager (A), Human Resources  
San Francisco District

CC: May Thin Zar, City Carrier, Daly City Post Office

EXHIBIT A



November 1, 2019

RE: Supervisory Structure for Phy় Castillo

To Whom It Concerns:

Please be advised that, pursuant to the resolution of an action in federal court, the Postal Service may not assign Ronaldo Caluag to supervise the employment, conduct, or performance of Phy় Castillo, no matter their respective positions.

Should you have any questions about this situation, please contact the Pacific Area Law Office at (415) 550-5300.

Thank you,

A handwritten signature in black ink that appears to read "David Morrison".

David Morrison  
Manager (A), Human Resources  
San Francisco District

CC: Phy় Castillo, Carrier Technician, Daly City Post Office

EXHIBIT A

# **Exhibit B**



November 1, 2019

Ronaldo Caluag  
City Carrier  
Townsend Carrier Annex  
San Francisco Post Office

*via Hand Delivery*

RE: Instruction to Stay Away

Mr. Caluag:

This letter notifies you that the instructions in the attached April 9, 2018, letter from Abraham Cooper are indefinite in duration, irrespective of the status of the Civil Harassment Restraining Orders to which the letter refers.

The Postal Service will communicate these instructions to appropriate management officials as necessary to ensure their ongoing enforcement. Failure to adhere to these instructions may result in corrective action, up to and including removal.

Thank you,

A handwritten signature in black ink, appearing to read "David Morrison".

David Morrison  
Manager (A), Human Resources  
San Francisco District

Attachments: Plaintiffs' Complaint  
Defendant's Answer  
Letter from Abraham Cooper dated April 9, 2018

CC: Robert DiPaolo, Manager, Labor Relations, San Francisco District  
Abraham Cooper, Postmaster, San Francisco  
Iris Ledesma, Manager, Customer Services, San Francisco-TCA  
Joseph Cheng, Supervisor, Customer Services, San Francisco-TCA  
April Petty, Supervisor, Customer Services, San Francisco-TCA  
Wendy Berni, Supervisor, Customer Services, San Francisco-TCA  
Jo Anne Gallow, Supervisor, Customer Services, San Francisco-TCA  
Harley Palaganas, Supervisor, Customer Services, San Francisco-TCA  
Rebecca Inshaw, Supervisor, Customer Services, San Francisco-TCA  
May Thin Zar, City Carrier, Daly City Post Office  
Phyu Castillo, Carrier Technician, Daly City Post Office  
Ophelia Sosa, National Association of Letter Carriers

Julia Parish (SBN 279065)  
E-Mail: [jparish@legalaidatwork.org](mailto:jparish@legalaidatwork.org)  
Katherine Wutchiett (SBN 308240)  
E-Mail: [kwutchiett@legalaidatwork.org](mailto:kwutchiett@legalaidatwork.org)

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**STEWART & MUSELL, LLP**  
2200 Powell St., Ste. 440  
Emeryville, CA 94608  
Tel: (415) 593-0083  
Fax: (415) 520-0920

Attorneys for Plaintiffs  
May Thin Zar  
Phyu Castillo

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MAY THIN ZAR and PHYU CASTILLO, ) Case No. 19-cv-250  
Plaintiffs, ) PLAINTIFFS' COMPLAINT FOR  
v. ) DAMAGES AND DECLARATORY  
MEGAN J. BRENNAN, POSTMASTER ) AND INJUNCTIVE RELIEF  
GENERAL OF THE UNITED STATES )  
POSTAL SERVICE, )  
Defendant. )  
DEMAND FOR JURY TRIAL

Case No. 19-cv-250

1 Plaintiffs May Thin Zar and Phyu Castillo allege as follows:

2 **INTRODUCTION**

3       1. Plaintiffs May Thin Zar and Phyu Castillo (“Plaintiffs” or “Ms. Thin Zar” and  
 4 “Ms. Castillo”), are employees of the United States Postal Service (“Defendant” or “U.S.P.S”) in  
 5 Daly City, California. They bring this Title VII action for sexual harassment and sex  
 6 discrimination perpetrated by their supervisor and co-employee, Ronald Caluag. Mr. Caluag’s  
 7 harassing conduct included restraining Plaintiffs against their will; engaging in unwelcomed  
 8 offensive touching, grabbing, and kissing; and making unwelcomed lewd, sexual, and aggressive  
 9 comments. This sexually harassing conduct was both severe and pervasive and created a hostile  
 10 work environment for Plaintiffs. Although aware of Mr. Caluag’s conduct, the U.S.P.S failed to  
 11 adequately protect Plaintiffs. Plaintiffs also bring a claim for retaliation.

12       2. Plaintiffs seek an injunction that prohibits the U.S.P.S. from assigning Mr. Caluag  
 13 to any facility at which the Plaintiffs are working and that requires the U.S.P.S. to take all steps  
 14 necessary to protect Plaintiffs and other female employees from sexual harassment and  
 15 discrimination by Mr. Caluag. Plaintiffs also seek an award of compensatory damages for pain  
 16 and suffering, reasonable attorneys’ fees, and costs.

17 **JURISDICTION AND VENUE**

18       3. This court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331,  
 19 1343(a)(4). This action arises under federal law: Title VII of the Civil Rights Act of 1964, 42  
 20 U.S.C. § 2000e, *et seq.*.

21       4. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
 22 1391(e), because the unlawful practices alleged in this complaint occurred in the Northern  
 23 District of California.

24 **INTRADISTRICT ASSIGNMENT**

25       5. Assignment of this action to the San Francisco Division of this Court is proper  
 26 pursuant to Local Rule 3-2(c) and (d) because the events giving rise to this action occurred in  
 27 San Mateo County, California.

## **PARTIES**

6. Plaintiff May Thin Zar is, and at all relevant times was, a resident of the Northern District of California and employed by Defendant U.S.P.S. at its Post Office in Daly City.

7. Plaintiff Phyu Castillo is, and at all relevant times was, a resident of the Northern District of California and employed by Defendant U.S.P.S. at its Post Office in Daly City.

8. Defendant Megan J. Brennan is Postmaster General of the U.S.P.S. and is therefore head of the relevant executive agency. Accordingly, Ms. Brennan is named as defendant in this action pursuant to 28 U.S.C. § 2000e-16(c). Defendant is sued in her official capacity only.

## **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9. Plaintiff May Thin Zar filed an informal EEO complaint on December 8, 2017, followed by a formal EEO complaint on approximately March 20, 2018. In mid-April, Ms. Thin Zar responded to the Acceptance for Investigation, requesting that the EEO investigate all complaints alleged in her complaint. The EEO investigated and issued its final agency decision on November 13, 2018.

10. Plaintiff Phyu Castillo filed an informal EEO complaint on approximately January 9, 2018, which she amended on or about February 28, 2018, followed by a formal EEO complaint on approximately April 4, 2018. The EEO investigated and issued its final agency decision on October 18, 2018.

11. Plaintiffs have fully exhausted their administrative remedies and are entitled to file in the district court.

## FACTS

## May Thin Zar

12. Ms. Thin Zar is female. She began working for the U.S.P.S. at its Daly City location in September 2016 and continues to be employed there. Her primary job duties include preparing and delivering mail.

13. Soon after beginning her employment, Ms. Thin Zar noticed that Mr. Caluag watched her and tried to stay in close proximity to her. Shortly thereafter, almost every shift that he supervised Ms. Thin Zar, approximately once weekly, Mr. Caluag started telling her that he liked

1 and loved her and wanted to go on a date with her. Ms. Thin Zar would tell Mr. Caluag that she was  
2 married, that she was not interested in him, and that she did not want a relationship with him. Ms.  
3 Thin Zar worried about being alone with Mr. Caluag and asked a coworker to stay with her at the  
4 end of their shift. On at least one occasion, Mr. Caluag asked the coworker to leave, so that he could  
5 drive Ms. Thin Zar home alone.

6       14. In early to mid-2017, the coworker that stayed with Ms. Thin Zar transferred to  
7 another office. Mr. Caluag began touching, sniffing, smelling, and kissing Ms. Thin Zar's hair and  
8 attempting to kiss her cheek during almost every shift that he supervised her. This was frightening  
9 and offensive to Ms. Thin Zar. Because of Mr. Caluag's conduct, Ms. Thin Zar asked other  
10 coworkers to wait for her at the end of their shift and leave with her. She told some of these  
11 coworkers that the reason for her request was that she did not want to be alone with Mr. Caluag,  
12 because he would try to touch or kiss her.

13       15. In around June 2017, Mr. Caluag asked Ms. Thin Zar to help him with a task in a  
14 private office. Because Mr. Caluag was Ms. Thin Zar's supervisor, she said yes. Once they were  
15 inside the office, he closed the door, restrained her, and kissed her. Ms. Thin Zar was terrified. She  
16 turned her head so that he could only kiss her cheek, yelled, struggled to get away, broke free, and  
17 ran out of the room.

18       16. Mr. Caluag started asking Ms. Thin Zar to go into private offices with him almost  
19 every shift that he supervised her, approximately once weekly. On one occasion, soon after the June  
20 attack, Mr. Caluag grabbed Ms. Thin Zar's wrist and tried to drag her back into a private office. Ms.  
21 Thin Zar yelled and struggled free, but injured her wrist in the process.

22       17. On or about October 29, 2017, Mr. Caluag waited for Ms. Thin Zar near the exit at  
23 the end of her shift. Ms. Thin Zar told Mr. Caluag that she wanted to go home, but Mr. Caluag came  
24 toward Ms. Thin Zar and grabbed her, wrapping his arms around her, kissing her aggressively with  
25 his tongue, causing her to fall down, and then falling on top of her. Through the entire incident, Ms.  
26 Thin Zar struggled to get away. Eventually, she escaped and left. Ms. Thin Zar reported this  
27 incident to her supervisor on or about the next day. She was afraid for her job, but believed that if  
28

1 she did not do something, the sexual attacks against her would continue to escalate and Mr. Caluag  
 2 would rape her.

3       18. After Ms. Thin Zar reported what had happened and her fear that Mr. Caluag would  
 4 attack her, she continued to be required to work with him. Mr. Caluag would glare at her when he  
 5 saw her around the office and laugh. This was frightening to Ms. Thin Zar and demonstrated that  
 6 Mr. Caluag did not take her complaints seriously and that he was untouchable. Ms. Thin Zar is  
 7 informed and believes that Mr. Caluag told her coworkers that she would be fired for reporting him.  
 8 During the investigation of her complaint, management warned Ms. Thin Zar to “be careful”  
 9 because Mr. Caluag had complained about her. Ms. Thin Zar continued working, afraid both for her  
 10 safety and her job.

11       19. The trauma of the attacks and subsequent fear for her safety have caused Ms. Thin  
 12 Zar to experience severe distress, for which she has sought medical care. Ms. Thin Zar felt  
 13 humiliated and degraded by the sexual attacks and worries how they will impact how she is viewed  
 14 in her community. Ms. Thin Zar continues to fear that Mr. Caluag will attack her while she is  
 15 delivering the mail.

16 **Phyu Castillo**

17       20. Ms. Castillo began working for the U.S.P.S. around 2001. By 2003, she transferred  
 18 to the Daly City Post Office. Her primary job duties include preparing and delivering mail.

19       21. At the Daly City Post Office, Ms. Castillo worked with Mr. Caluag. When Mr.  
 20 Caluag and Ms. Castillo were alone together, Mr. Caluag would leer at Ms. Castillo’s breasts and  
 21 make salacious comments like, “mmmm,” or “I want some of this,” on about a weekly basis.

22       22. This continued through 2009, when Mr. Caluag’s behavior escalated. He began  
 23 touching Ms. Castillo and suggesting that they perform sexual acts together. Often, he would grab  
 24 her hand and try to drag her into a bathroom or private space.

25       23. In or around 2016, Mr. Caluag became a supervisor. He became yet more  
 26 aggressive, frequently commenting on Ms. Castillo’s breasts and asking her for kisses.

27       24. In or around September 2017, Ms. Castillo approached Mr. Caluag to ask him about  
 28 a union matter. In response, Mr. Caluag suggested that they go downstairs to smoke. When Ms.

1 Castillo and Mr. Caluag got down the stairs and were isolated, Mr. Caluag grabbed her, pressed his  
 2 erect penis against her body, held her, and tried to kiss her. Ms. Castillo struggled free, repeating,  
 3 "No!" and escaped to the parking lot. At the time, Ms. Castillo was afraid to report Mr. Caluag,  
 4 because he was a supervisor and had held positions of power at work and in the union. Mr. Caluag's  
 5 abusive sexual behavior was open and notorious in the workplace for years and it appeared that  
 6 U.S.P.S. took no effective actions to prevent or end it.

7       25.     In November of 2017, Ms. Castillo learned that Mr. Caluag had assaulted her  
 8 coworker, Ms. Thin Zar. Ms. Castillo was terrified for her own safety and that of her coworkers.  
 9 Ms. Castillo reported what had happened to her to the Postmaster and explained that she did not feel  
 10 safe at work.

11       26.     Ms. Castillo continued to be required work shifts which could overlap with Mr.  
 12 Caluag's. When he saw her, Mr. Caluag glared or stared at Ms. Castillo. Ms. Castillo learned that  
 13 Mr. Caluag had told other U.S.P.S. employees and supervisors that he felt sorry for Ms. Castillo and  
 14 that Ms. Castillo had only reported him to get out of having to work. There appeared to be no  
 15 consequences for this retaliatory conduct. Ms. Castillo felt afraid for her safety and reported Mr.  
 16 Caluag's statements to the Postmaster Charles Bolton.

17       27.     The trauma of the attacks and subsequent fear for her safety have caused Ms.  
 18 Castillo to experience severe distress, for which she has sought medical care. Ms. Castillo felt  
 19 humiliated and degraded by the attack. Ms. Castillo continues to fear that Mr. Caluag will attack her  
 20 while she is delivering the mail.

21       28.     Upon information and belief, Mr. Caluag has sexually assaulted and harassed other  
 22 female U.S.P.S. employees. Despite multiple women, including Plaintiffs, coming forward at great  
 23 risk to themselves and describing the sexual attacks against them, the U.S.P.S. has refused to take  
 24 prompt or effective action, brushing off the sexual assaults, requiring Plaintiffs to work with Mr.  
 25 Caluag, and refusing to take adequate actions to address the harassment and discrimination against  
 26 Plaintiffs. The U.S.P.S. keeps Mr. Caluag working in positions of actual or perceived authority  
 27 where he has access to women he can exploit and abuse in the workplace.

**FIRST CLAIM FOR RELIEF**  
**Sexual Harassment and Sex Discrimination**  
**(Title VII, 42 U.S.C. §§ 2000e, et. seq.)**  
**[On Behalf of Both Plaintiffs]**

29. Plaintiffs incorporate by reference each and every allegation contained in the  
preceding paragraphs as though fully stated here.

30. Title VII prohibits Defendant U.S.P.S. from discriminating against any employee  
on the basis of sex. Discrimination on the basis of sex includes sexual harassment.

31. In perpetrating the above-described acts and omissions, Defendant, its agents,  
servants, and/or employees, engaged in unlawful sexual harassment and discrimination in  
violation of Title VII.

32. Defendant, its agents, and employees engaged in targeted harassment against  
Plaintiffs because of their sex. Defendant subjected Plaintiffs to unwelcome sexual comments  
and sexual attacks and acts that were terrifying, humiliating, harmful, and degrading. Mr.  
Caluag's sexual harassment caused Plaintiffs pain, stress, and anxiety. Plaintiffs obtained  
medical care for these conditions. The above-mentioned unwelcomed acts were severe or  
pervasive and created a hostile work environment for Plaintiffs.

33. Plaintiffs perceived the working environment to be abusive or hostile, which  
caused Plaintiffs sufficient stress and anxiety to require medical care.

34. Because Mr. Caluag acted as Plaintiffs' supervisor, U.S.P.S. is strictly liable for  
Mr. Caluag's sexual harassment of Plaintiffs.

35. Additionally, U.S.P.S. knew or should have known of Mr. Caluag's sexual  
harassment and the resulting hostile work environment, but nevertheless failed to take prompt  
and effective remedial action. Accordingly, U.S.P.S. is liable for Mr. Caluag's sexual harassment  
even if he was not acting as a supervisor. Plaintiffs were harmed because of the foregoing  
described conduct of Defendant, which was a substantial factor in causing Plaintiffs harm.

36. As a direct and proximate result of the actions alleged herein, Plaintiffs have and  
will suffer damages including, but not limited to pain, suffering, humiliation, shame, anxiety,

embarrassment, mortification, hurt feelings, physical harm, and emotional distress, all in an amount to be proven at trial.

37. Plaintiffs are entitled to statutory attorneys' fees and costs, and other appropriate relief as determined by this court.

## **SECOND CLAIM FOR RELIEF**

## **Retaliation**

(Title VII, 42 U.S.C. §§ 2000e, et seq.)

**[On Behalf of Both Plaintiffs]**

38. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

39. Title VII prohibits Defendant from retaliating against any employee because she engaged in a protected activity. Resisting and/or complaining of sexual harassment is a protected activity under Title VII.

40. Defendant and its agents, servants, and/or employees, engaged in unlawful retaliation in violation of Title VII.

41. Plaintiffs engaged in protected activity by resisting and complaining of sexual harassment and requesting to be protected from Mr. Caluag.

42. Defendant, its agents, and/or employees retaliated against Plaintiffs on the basis of their protected activity, and took material and adverse employment actions against them, including by creating and permitting a hostile work environment and requiring Plaintiffs to continue to work with Mr. Caluag even after they described sexual attacks against them that rise to the level of sexual assault and explained their fears of further attacks. U.S.P.S. led Plaintiffs to believe that Mr. Caluag was untouchable, and that they would never be able to safely work again. Mr. Caluag was permitted to spread gossip after Plaintiffs complained of harassment which caused Plaintiff Thin Zar to fear for her job and humiliated Ms. Castillo. Defendant failed to take effective remedial action such that the Defendant's action would deter a reasonable employee in the same situation from making a complaint.

43. As a direct and proximate result of the actions alleged herein, Plaintiffs have and will suffer damages including, but not limited to, pain, suffering, humiliation, shame, anxiety,

embarrassment, mortification, hurt feelings, physical harm, and emotional distress, all in an amount to be proven at trial.

44. Plaintiffs are entitled to statutory attorneys' fees and costs, and other appropriate relief as determined by this court.

## **INJUNCTIVE RELIEF**

45. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

46. Plaintiffs seek an injunction that prohibits the U.S.P.S. from assigning Mr. Caluag to any facility at which Plaintiffs are working, and that requires the U.S.P.S. to take all steps necessary to protect Plaintiffs and other female employees from sexual harassment and discrimination by Mr. Caluag.

47. Plaintiffs seek effective training that addresses sexual assault, sexual harassment, sexual discrimination, and retaliation in the workplace.

48. No previous application for injunctive relief sought herein has been made to this Court.

49. If this Court does not grant the injunctive relief sought herein, Plaintiffs will be irreparably harmed.

50. No plain, adequate, or complete remedy at law is available to Plaintiffs to redress the wrongs addressed herein.

## **DECLARATORY RELIEF**

51. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

52. An actual controversy has arisen and now exists relating to the rights and duties of the parties herein in that Plaintiffs contend that Defendant violated their rights not to be subjected to sexual harassment and retaliation. On information and belief, Defendant denies these allegations. Declaratory relief is therefore necessary and appropriate.

53. Plaintiffs seek a judicial declaration of the rights and duties of the respective parties.

## **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs prays for relief as follows:

1. For declaratory judgment that the practices complained of in this complaint are unlawful and violate Title VII;
  2. For injunctive relief, including but not limited to appropriate discipline and prevention of Mr. Caluag from working with Plaintiffs at the Daly City USPS office and requiring institutional adherence to reasonable sex harassment policies consistent with Title VII;
  3. For compensation denied or lost to Plaintiffs by reason of the unlawful acts alleged herein, in an amount to be proven at trial;
  4. For payment of compensatory damages for Plaintiffs' emotional pain and suffering, in an amount to be proven at trial;
  5. For Plaintiffs' attorneys' fees and costs;
  6. For payment of interest at the legal rate on such damages as appropriate, including pre- and post-judgment interest; and
  7. For any further relief that the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs, hereby demand a trial by jury of each and every cause of action so triable.

DATED: January 14, 2019

By: Katherine Wutchieff

*Attorneys for Plaintiffs  
May Thin Zar & Phy়u Castillo*

## LEGAL AID AT WORK

Julia Parish

Katherine Wutchiett

STEWART & MUSELL

Wendy Musell

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7 Attorneys for Defendant  
8 POSTMASTER GENERAL

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 MAY THIN ZAR and PHYU CASTILLO;

Case No. 19-250-MMC

13 Plaintiffs,

14 v.  
15 DEFENDANT'S ANSWER TO PLAINTIFFS'  
16 GENERAL OF THE UNITED STATES  
17 POSTAL SERVICE;  
18 Defendant.

DEMAND FOR JURY TRIAL

ANSWER

The Postmaster General hereby responds to Plaintiffs' Complaint for Damages and Declaratory and Injunctive Relief ("Complaint") as follows:

1. Defendant admits that Plaintiffs are employees of the United States Postal Service ("USPS"), stationed in Daly City, California. Defendant admits that Plaintiffs purport to bring this employment discrimination action under Title VII, but denies that their claims have merit. Except as expressly admitted, Defendant denies the allegations in Paragraph 1.

2. Defendant admits that Plaintiffs seek damages, injunctive relief and attorneys' fees, but denies that any such relief is appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 2.

1       3.     Defendant admits that this Court has federal question jurisdiction over this matter.

2       4.     Defendant admits that this matter is properly venued in the Northern District of  
3 California.

4       5.     Defendants admits that assignment of this action to the San Francisco Division is proper  
5 under Local Rule 3-2(d).

6       6.     Defendant admits that Plaintiff May Thin Zar is employed by the USPS at Daly City.  
7 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
8 Paragraph 6 and, on that basis, denies them.

9       7.     Defendant admits that Plaintiff Phyu Castillo is employed by the USPS at Daly City.  
10 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
11 Paragraph 7 and, on that basis, denies them.

12       8.     Defendant admits that the Postmaster General is the proper defendant in this employment  
13 action, in her official capacity.

14       9.     Defendant denies that Plaintiff Zar filed an informal EEO complaint on December 8,  
15 2017. Defendant admits that Plaintiff Zar submitted a formal EEO complaint on approximately March  
16 20, 2018. Defendant admits that it investigated Plaintiff Zar's formal EEO complaint and, at her  
17 request, issued its Final Agency Decision, dated November 13, 2018. Defendant is without sufficient  
18 knowledge to admit or deny the remainder of the allegations in Paragraph 9 and, on that basis, denies  
19 them.

20       10.    Defendant denies that Plaintiff Castillo filed an informal EEO complaint on January 9,  
21 2018. Defendant admits that Plaintiff Castillo submitted a document titled Amended Charge of  
22 Discrimination, which was dated February 27, 2018. Defendant admits that Plaintiff Castillo submitted  
23 a formal complaint of discrimination on approximately April 4, 2018. Defendant admits that it  
24 investigated Plaintiff Castillo's formal EEO complaint and, at her request, issued its Final Agency  
25 Decision, dated October 18, 2018.

26       11.    Defendant denies that Plaintiff Castillo has exhausted her administrative remedies related  
27 to conduct that occurred more than 45 days before she contacted an EEO counselor on or about January 9,  
28 2018, as such contact was untimely.

1       12.   Defendant admits the allegations in Paragraph 12.

2       13.   Defendant admits that, beginning in or around March 2017, Mr. Caluag made romantic  
3 overtures towards Plaintiff Zar—conduct which caused Defendant to issue him a Notice of Removal.  
4 Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant is  
5 without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 13 and, on  
6 that basis, denies them.

7       14.   Defendant admits that, beginning in or around March 2017, Mr. Caluag made romantic  
8 overtures towards Plaintiff Zar—conduct which caused Defendant to issue him a Notice of Removal.  
9 Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant is  
10 without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 14 and, on  
11 that basis, denies them.

12       15.   Defendant admits that sometime between April and June 2017, Mr. Caluag called Plaintiff  
13 Zar into an office, wherein he attempted to hug and kiss her without her consent—an offense for which  
14 Defendant issued him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor” within the  
15 meaning of federal law. Defendant is without sufficient knowledge to admit or deny the remainder of the  
16 allegations in Paragraph 15 and, on that basis, denies them.

17       16.   Defendant admits that in or around the beginning of October 2017, Mr. Caluag grabbed  
18 Plaintiff Zar’s wrist to stop her from leaving his presence after she told him not to touch her—an offense for  
19 which Defendant issued him a Notice of Removal. Defendant denies that Mr. Caluag was a “supervisor”  
20 within the meaning of federal law. Defendant is without sufficient knowledge to admit or deny the  
21 remainder of the allegations in Paragraph 16 and, on that basis, denies them.

22       17.   Defendant admits that on or about October 29, 2017, Mr. Caluag attempted to kiss, or did  
23 kiss, Plaintiff Zar without her consent—an offense for which Defendant issued him a Notice of Removal.  
24 Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law. Defendant denies  
25 that Plaintiff Zar reported this incident to her supervisor the next day. Defendant is without sufficient  
26 knowledge to admit or deny the remainder of the allegations in Paragraph 17 and, on that basis, denies  
27 them.

28       18.   Defendant admits that, immediately following her report, Plaintiff Zar and Mr. Caluag

1 remained employed with the USPS at the same facility. However, Defendant immediately instruct Mr.  
 2 Caluag not to have contact with Plaintiff Zar. Defendant denies that Mr. Caluag was “untouchable”—as  
 3 soon as Plaintiff Zar complained about him, the USPS investigated, issued a Notice of Removal, and  
 4 permanently transferred him to another facility. Defendant is without sufficient knowledge to admit or  
 5 deny the remainder of the allegations in Paragraph 18 and, on that basis, denies them.

6       19.     Defendant denies that there is any evidence to suggest that Mr. Caluag will attack  
 7 Plaintiff Zar while she is delivering mail and notes that he has been transferred to a different facility and  
 8 that the USPS has instructed him to obey the restraining order Plaintiff Zar obtained from San Mateo  
 9 Superior Court on pain of corrective action, up to and including his removal from employment.  
 10 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
 11 Paragraph 19 and, on that basis, denies them.

12       20.     Defendant admits the allegations in Paragraph 20.

13       21.     Defendant admits that Mr. Caluag was also employed at the Daly City Post Office.  
 14 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
 15 Paragraph 21 and, on that basis, denies them.

16       22.     Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph  
 17 22 and, on that basis, denies them.

18       23.     Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law.  
 19 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
 20 Paragraph 23 and, on that basis, denies them.

21       24.     Defendant denies that Mr. Caluag was a “supervisor” within the meaning of federal law.  
 22 Defendant further denies that anyone can be both a “supervisor” and hold a position of power within a  
 23 collective bargaining unit, as “supervisors” cannot even be members of a bargaining unit under the National  
 24 Labor Relations Act. Defendant denies that Mr. Caluag engaged in “abusive sexual behavior” that was  
 25 “open and notorious in the workplace for years.” Defendant denies that the USPS failed to take effective  
 26 actions to prevent or end any unlawful conduct of which it was aware. Defendant admits that, in September  
 27 2017, Mr. Caluag grabbed Plaintiff Castillo by the shoulders, pulled her close to him, and attempted to kiss  
 28 her on the mouth without her consent—an offense for which Defendant issued him a Notice of Removal.

1 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
 2 Paragraph 24 and, on that basis, denies them.

3       25.     Defendant admits that, at the end of November 2017, while the USPS was investigating  
 4 Plaintiff Zar's complaints, Plaintiff Castillo submitted a written statement accusing Mr. Caluag of sexual  
 5 misconduct. Defendant is without sufficient knowledge to admit or deny the remainder of the  
 6 allegations in Paragraph 25 and, on that basis, denies them.

7       26.     Defendant admits that after Plaintiff Castillo complained about Mr. Caluag, they both  
 8 continued to be employed by the USPS and to work in the Daly City Post Office. Defendant admits that  
 9 Plaintiff Castillo informed Officer-in-Charge Charles Bolton that she believed Mr. Caluag was gossiping  
 10 about the complaints against him and that Mr. Caluag looked at her. Defendant denies that the USPS  
 11 failed to take action based on these allegations. After learning of the complaints, the USPS investigated,  
 12 issued a Notice of Removal, and permanently transferred Mr. Caluag to another facility. Defendant is  
 13 without sufficient knowledge to admit or deny the remainder of the allegations in Paragraph 26 and, on  
 14 that basis, denies them.

15       27.     Defendant denies that there is any evidence to suggest that Mr. Caluag will attack  
 16 Plaintiff Castillo while she is delivering mail and notes that he has been transferred to a different facility  
 17 and that the USPS has instructed him to obey the restraining order Plaintiff Castillo obtained from San  
 18 Mateo Superior Court on pain of corrective action, up to and including his removal from employment.  
 19 Defendant is without sufficient knowledge to admit or deny the remainder of the allegations in  
 20 Paragraph 27 and, on that basis, denies them.

21       28.     Defendant lacks any information to suggest that Mr. Caluag has sexually assaulted or  
 22 harassed other employees and, on that basis, denies said allegation. Defendant denies that the USPS  
 23 failed to take prompt or effective action in response to any complaints it received regarding Mr. Caluag.  
 24 Defendant denies that the USPS "brushed off the sexual assaults." Defendant admits that Mr. Caluag  
 25 continued to be employed at the Daly City Post Office until January 2018, but denies that either Plaintiff  
 26 was required to work with him after her complaints. Indeed, the USPS instructed Mr. Caluag to stay  
 27 away from Plaintiffs. Defendant denies that the USPS has refused to take adequate actions to address  
 28 harassment and discrimination against either Plaintiff, or any other employee. Defendant denies that

1 Mr. Caluag currently works in positions of actual or perceived authority. Defendant denies that Mr.  
2 Caluag was ever a “supervisor” within the meaning of federal law. Except as expressly admitted, Defendant  
3 denies the allegations in Paragraph 28.

4       29.     Defendant incorporates by reference its response to each allegation set forth above as if  
5 fully set forth herein.

6       30.     Paragraph 30 consists solely of legal conclusions regarding the requirements of Title VII,  
7 to which no response is required.

8       31.     Defendant denies the allegations in Paragraph 31.

9       32.     Defendant admits that Mr. Caluag’s behavior, as cited in its Notice of Removal, was  
10 contrary to Defendant’s policies and requirements for employees. Defendant lacks sufficient  
11 information to admit or deny the allegations regarding Plaintiffs’ state of mind and medical care and, on  
12 that basis, denies them. Defendant otherwise denies the allegations in Paragraph 32.

13       33.     Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph  
14 33 and, on that basis, denies them.

15       34.     Defendant admits that Mr. Caluag had limited power to direct Plaintiffs’ work tasks one  
16 day a week at certain times relevant to their Complaint. However, Defendant denies that Mr. Caluag  
17 was ever a “supervisor” within the meaning of federal law. Except as expressly admitted, Defendant  
18 denies the allegations in Paragraph 34.

19       35.     Defendant denies the allegations in Paragraph 35.

20       36.     Defendant denies the allegations in Paragraph 36.

21       37.     Defendant denies the allegations in Paragraph 37.

22       38.     Defendant incorporates by reference its response to each allegation set forth above as if  
23 fully set forth herein.

24       39.     Paragraph 39 consists solely of legal conclusions regarding the requirements of Title VII,  
25 to which no response is required.

26       40.     Defendant denies the allegations in Paragraph 40.

27       41.     Defendant admits that opposing discrimination on the basis sex and complaining about it  
28 are protected activities under Title VII. Except as expressly admitted, Defendant denies the allegations

1 in Paragraph 41.

2 42. Defendant denies the allegations in Paragraph 42.

3 43. Defendant denies the allegations in Paragraph 43.

4 44. Defendant denies the allegations in Paragraph 44.

5 45. Defendant incorporates by reference its response to each allegation set forth above as if  
6 fully set forth herein.

7 46. Defendant admits that Plaintiffs seek injunctive relief, but denies that any such relief is  
8 appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 46.

9 47. Defendant admits that Plaintiffs seek injunctive relief, but deny that any such relief is  
10 appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 47.

11 48. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph  
12 48 and, on that basis, denies them.

13 49. Defendant denies the allegations in Paragraph 49.

14 50. Defendant denies the allegations in Paragraph 50.

15 51. Defendant incorporates by reference its response to each allegation set forth above as if  
16 fully set forth herein.

17 52. Defendant admits that Plaintiffs seek declaratory relief, but denies that any such relief is  
18 appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 52.

19 53. Defendant admits that Plaintiffs seek declaratory relief, but denies that any such relief is  
20 appropriate. Except as expressly admitted, Defendant denies the allegations in Paragraph 53.

21 **AFFIRMATIVE DEFENSES**

22 **FIRST AFFIRMATIVE DEFENSE**  
23 **(Prompt Corrective Action)**

24 1. Plaintiffs' claims are barred, in whole or in part, because Defendant exercised reasonable  
25 care to prevent and correct promptly any allegedly discriminatory, harassing, or retaliatory behavior.

26 **SECOND AFFIRMATIVE DEFENSE**  
27 **(Effective Administrative Process—*Ellerth/Faragher*)**

28 2. Defendant maintains an effective administrative process for preventing and correcting

1 any improper, retaliatory, discriminatory and harassing conduct and Plaintiffs unreasonably failed to  
2 avail themselves of these opportunities to protect themselves from any allegedly improper conduct.

3

4                   **THIRD AFFIRMATIVE DEFENSE**  
4                   **(Failure to Mitigate)**

5                 3. To the extent that Plaintiffs have failed to mitigate their damages, their recovery is  
6 limited accordingly.

7

8                   **FOURTH AFFIRMATIVE DEFENSE**  
8                   **(Exhaustion of Administrative Remedies)**

9                 4. To the extent that Plaintiffs allege or assert matters not contained in a legally sufficient and  
10 timely administrative claim, such claims are barred by the exhaustion of administrative remedies doctrine.  
11 For example, Plaintiff Castillo's claims based on conduct that occurred more than 45 days before she  
12 contacted an EEO counselor on or about January 9, 2018, are barred.

13

14                   **FIFTH AFFIRMATIVE DEFENSE**  
14                   **(Mixed Motive)**

15                 5. To the extent that Plaintiffs demonstrates that a discriminatory or retaliatory motive  
16 played a part in the challenged actions, which Defendant denies, Defendant asserts that the same actions  
17 would have been taken absent the discriminatory or retaliatory motive.

18

19                   **SIXTH AFFIRMATIVE DEFENSE**  
19                   **(Lack of Agency)**

20                 6. To the extent that Plaintiffs demonstrates that employees of Defendant committed  
21 unlawful acts, as alleged in the Complaint, which Defendant does not concede, Defendant asserts that  
22 such unlawful acts were committed outside the scope of employment and not by agents of Defendant.

23

24                 The Postmaster General reserves the right to assert additional affirmative defenses as discovery  
25 develops and warrants.

## PRAAYER FOR RELIEF

WHEREFORE, the Postmaster General prays that:

1. Plaintiffs takes nothing by their Complaint;
  2. The Postmaster General has judgment against Plaintiffs;
  3. The Postmaster General be awarded her costs of suit; and
  4. For such other and further relief as the Court may deem proper.

**DEMAND FOR JURY TRIAL**

Defendant hereby demands trial by jury.

DATED: March 18, 2019

Respectfully submitted,

DAVID L. ANDERSON  
United States Attorney

/s/ Wendy M. Garbers  
WENDY M. GARBERS  
Assistant United States Attorney  
Attorney for Defendant



April 9, 2018

Ronald Caluag  
[REDACTED]

Subject: Letter of Instruction

Mr. Caluag:

The Postal Service has learned that May Thin Zar has obtained a Civil Harassment Restraining Order prohibiting you to be within 100 yards of her until April 2, 2020, including while either of you may be at work. The Postal Service has similarly learned that Phyu Castillo has also obtained a Civil Harassment Restraining Order prohibiting you to be within 100 yards of her until April 2, 2020, including while either of you may be at work. Therefore, to avoid further conflict between you and these employees, the Postal Service is issuing you the following instructions.

Effective immediately, and except as otherwise permitted by the National Labor Relations Act, you are hereby instructed as follows:

1. You are to stay away from and avoid May Thin Zar any time you are on Postal Service property or conducting Postal Service business. This means you have the obligation to leave any area where May Thin Zar is.
2. You are to stay away from and avoid Phyu Castillo any time you are on Postal Service property or conducting Postal Service business. This means you have the obligation to leave any area where Phyu Castillo is.
3. You are not to visit the Daly City Post Office under any circumstances unless you are legally entitled to do so in your capacity as a Postal Service customer. If you have cause to go to the Daly City Post Office as a customer, you are to avoid any contact with Phyu Castillo and May Thin Zar, to complete your business expeditiously, and to exit the property immediately upon completion. For clarity, as a customer, you are not entitled to be in any area restricted to employees only.
4. You are not to contact May Thin Zar on- or off-duty in person or via text, telephone call, personal message, or via any other means. You are also not to have someone else contact her on your behalf.
5. You are not to contact Phyu Castillo on- or off-duty in person or via text, telephone call, personal message, or via any other means. You are also not to have someone else contact her on your behalf.

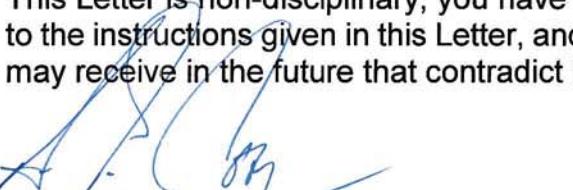
6. You are to conduct yourself in an appropriate manner as required by Postal Service policies. These requirements include, but are not limited to:

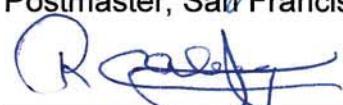
- a. treating your coworkers respectfully;
- b. not harassing anyone, at any level, in any way;
- c. not making sexual, romantic, or otherwise inappropriate comments or jokes to your coworkers;
- d. not using any language of a sexual nature;
- e. not threatening anyone; and
- f. obeying the terms of the Civil Harassment Restraining Orders the San Mateo Superior Court filed against you on April 3, 2018.

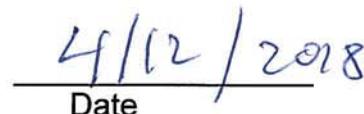
Employee & Labor Relations Manual ("ELM") Section 665.24 prohibits bullying and harassment of any kind. Further, ELM Section 665.16 requires that employees conduct themselves in a way that reflects favorably on the Postal Service, especially during working hours. These policies unequivocally prohibit the conduct described in the allegations the Postal Service has received against you regarding these two employees and those which formed the basis of the Civil Harassment Restraining Orders filed against you. Should management determine after investigation that you have engaged in any such behaviors in the future, or that you have taken any steps to undermine the Civil Harassment Restraining Orders other than properly challenging them through applicable legal process, you will be subject to corrective action, up to and including removal.

Please note that ELM Section 665.15 requires your adherence to the instructions contained in this Letter. If the Postal Service determines after investigation that you have violated any instruction in this Letter, you may be subject to whatever corrective action is appropriate pursuant to Postal Service policies, collective bargaining agreements, and other applicable law, up to and including removal.

This Letter is non-disciplinary; you have no right to appeal this Letter. There is no limitation to the instructions given in this Letter, and this Letter supersedes any verbal instructions you may receive in the future that contradict it.

  
\_\_\_\_\_  
Abraham Cooper  
Postmaster, San Francisco Post Office

  
\_\_\_\_\_  
Signature of Ronald Caluag for Purposes of Receipt Only

  
\_\_\_\_\_  
Date

# **Exhibit C**

# **Discrimination is Illegal.**

1. You have the right not to be discriminated against, treated worse, or harassed because of your race, color, religion, national origin, age, current or past disability status, genetic information, or sex (including pregnancy, sexual orientation, gender identity, or transgender status).
2. To make a complaint about harassment or discrimination, you must contact the Postal Service's Equal Employment Opportunity (EEO) Office **within 45 days**.
3. You can make a complaint online at **https://efile.usps.com**.

# **Retaliation is Illegal.**

You have the right to oppose discrimination and participate in anti-discrimination processes free from retaliation. To report retaliation, you must contact the EEO Office **within 45 days** at **https://efile.usps.com**.

**For immediate help with harassment, discrimination, or retaliation, contact your supervisor, postmaster, Human Resources, or the EEO Office.**

**For more information, see Section 666 of the Employee & Labor Relations Manual and Poster 159.**

# **Exhibit D**

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2 SARA WINSLOW (DCBN 457643)  
Chief, Civil Division  
3 WENDY M. GARBERS (CABN 213208)  
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8 Attorneys for Defendant  
9 POSTMASTER GENERAL

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 MAY THIN ZAR and PHYU CASTILLO,

14 Plaintiffs,

15 v.

16 MEGAN J. BRENNAN, POSTMASTER  
17 GENERAL OF THE UNITED STATES  
POSTAL SERVICE,

18 Defendant.

Case No. 19-250-MMC

**STIPULATION OF DISMISSAL WITH  
PREJUDICE PURSUANT TO FRCP  
41(a)(1)(A)(ii)**

20  
21 It is hereby stipulated by and between the undersigned Plaintiffs MAY THIN ZAR and PHYU  
22 CASTILLO and Defendant POSTMASTER GENERAL, by and through their respective attorneys, as  
23 follows:

24 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs and Defendant hereby  
25 stipulate to dismiss with prejudice the above-captioned action. Except as expressly set forth in the  
26 previously-filed Stipulation And Agreement Of Compromise And Settlement And [Proposed] Order,  
27 each party is to bear her own costs and attorneys' fees.

1           **SO STIPULATED AND AGREED.**

2

3           DATED:

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              Julia Parish  
              LEGAL AID AT WORK  
              Counsel for Plaintiffs MAY THIN ZAR and PHYU  
              CASTILLO

              DAVID L. ANDERSON  
              United States Attorney

              DATED:

              By:

              Wendy M. Garbers  
              Assistant United States Attorney  
              Attorney for Defendant